

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-106862-15

Date:

June 23, 2015

Parent =

Sub =

Advisor =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Holdings =

Tenant =

z =

y =

Date 5 =

Property =

S =

T =

U =

V =

W =

X =

Y =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear :

This is in reply to a letter dated January 29, 2015, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(l) of the Internal Revenue Code to treat Sub as a taxable real estate investment trust subsidiary ("TRS") of Parent.

Parent was organized on Date 1 as a limited liability company under the laws of State. On or around Date 2 it filed Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, for its taxable year ended Date 3. By filing that form it also elected to be treated as an association taxable as a corporation under section 301.7701-3(c)(1)(v) of the regulations.

On Date 4 Sub was organized as a limited liability company under the laws of State. Since that date Parent has owned indirectly a z% interest in Sub, as follows:

Parent owns z% of the interests in Holdings LLC, which owns all of the interests in a disregarded entity, which owns all of the interests in Sub.

Prior to Date 5, Sub's assets consisted of y% of the interests in Tenant. Tenant was also organized on Date 4 as a limited liability company under the laws of State and is a partnership for federal tax purposes.

T acquired all the rights, title, and interests in Property pursuant to an assignment from S on Date 5. S acquired its interest in Property from Ton Date 5. T acquired its interest in Property on Date 5 from U, V, W, X, and Y as sellers.

Tenant was intended to be the lessee of Property, a qualified lodging facility. Tenant acquired a leasehold of Property on Date 5 from S. It was also intended that Tenant would make an election to be classified as an association taxable as a corporation, and, jointly with Parent, would also make an election to be a TRS under section 856(l) of the Code.

In Date 6, a date subsequent to Date 5, a group within Advisor was consulted with regard to a non-tax matter pertaining to Tenant's acquisition of its leasehold of Property. That group, however, did not inform Advisor's tax personnel of the acquisition of Property or the lease of Property to Tenant.. Because of this failure to inform and coordinate with Advisor's tax personnel, no TRS election was made on behalf of Sub.

Shortly before Date 7 a partner in Advisor learned of the transaction on Date 4. At that time the partner asked if a Form 8832 had been filed on behalf of Sub, making its election to be classified as an association taxable as a corporation. The partner also asked if a Form 8875 had been filed on behalf of Sub, making its election, jointly with Parent, to be a TRS.

When Advisor learned that neither form had been filed, Advisor prepared the forms for Parent and Sub. Although the effective date for the Form 8832 was valid to include Date 5, the effective date for the Form 8875 could not be extended back any farther than Date 8. Date 7, however, is after Date 5, with the result that between Date 5 and Date 8 there was no effective election to treat Sub as a TRS.

Advisor told Parent and Sub of the availability of an extension of time to make the Form 8875 effective as of Date 5, and on Date 9 Advisor was engaged to prepare a request for an extension of time.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.

2. Granting the relief requested will not result in Taxpayer and Subsidiary having a lower tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer and Subsidiary do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Subsidiary did not choose to not file the election.
5. Taxpayer and Subsidiary are not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer and Subsidiary.

In addition, affidavits on behalf of Taxpayer and Subsidiary have been provided as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instruction further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Moreover, a taxpayer will be deemed not to have acted in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment

under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer and Subsidiary have shown good cause for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Subsidiary and Taxpayer is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions and Products)